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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEFF HOHLBEIN,

Plaintiff,

v.

APPLE PEDDLER RESTAURANTS, LLC, an  
Oregon Limited Liability Company, and  
DOES ONE to FIFTY, inclusive,

Defendants.

Case No. 07 4981 JZ

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES: DENIAL OF CIVIL  
RIGHTS OF A DISABLED PERSON IN  
VIOLATION OF THE AMERICANS WITH  
DISABILITIES ACT OF 1990; VIOLATION  
OF CALIFORNIA'S CIVIL RIGHTS  
STATUTES

JURY TRIAL REQUESTED

Plaintiff JEFF HOHLBEIN complains of defendants APPLE PEDDLER  
RESTAURANTS, LLC, an Oregon Limited Liability Company, and DOES ONE to FIFTY,  
inclusive, and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations  
of the *Americans with Disabilities Act of 1990*, (42 USC § 12101, et seq.) Pursuant to  
pendant jurisdiction, attendant and related causes of action, arising from the same facts, are  
also brought under California law, including, but not limited to, violations of *California Health  
& Safety Code* § 19955, et seq., including *California Code of Regulations*, Title 24, § 19959,  
*California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district, at Crescent City, Del Norte County, California, and that Plaintiff's causes of action arose in this district.

### **INTRODUCTION**

3. **APPLE PEDDLER RESTAURANT** is located at 308 US HWY 101 S., Crescent City, Del Norte County, California. Said restaurant is owned and operated by defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited Liability Company, and DOES ONE to FIFTY, inclusive.**

4. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited Liability Company, and DOES ONE to FIFTY, inclusive,** operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

1. The front entrance swinging door(s) into the restaurant require excessive pressure to open in violation of California Title 24 § 1133B.2.5 and ADAAG 4.13.11\*(b).
2. The inside of the men's restroom is not big enough to maneuver a wheelchair in violation of California Title 24 § 1118B.4 (2) and ADAAG 4.16, 4.17.
3. The men's restroom stall is too small in violation of California Title 24 §1115B.7(2)(3) and ADAAG 4.16, 4.17.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JEFF HOHLBEIN** suffers violations of his civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will suffer embarrassment and humiliation.

### **FACTUAL ALLEGATIONS**

5. Plaintiff **JEFF HOHLBEIN** is, and at all times relevant to this Complaint is, a "physically handicapped person," "physically disabled person," and a "person with a disability," as these terms are used under California law and under federal laws including, but not limited

1 to, Title III of the **Americans with Disabilities Act of 1990**. (The terms "physically  
2 handicapped person," "physically disabled person," and a "person with a disability" will be used  
3 interchangeably throughout this Complaint.) Plaintiff is a "person with a disability," as defined  
4 by all applicable California and United State's laws. Plaintiff **JEFF HOHLBEIN** is severely  
5 limited in the use of his legs.

6 6. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited**  
7 **Liability Company, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were  
8 and are the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of  
9 public facilities known as the "**APPLE PEDDLER RESTAURANT**," located at Crescent City,  
10 Del Norte County, California, subject to the requirements of California state law requiring full  
11 and equal access to public facilities pursuant to **California Health & Safety Code** § 19955, *et*  
12 *seq.*, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title  
13 III of the **Americans with Disabilities Act of 1990**, and to all other legal requirements referred  
14 to in this Complaint. Plaintiff does not know the relative responsibilities of defendants in the  
15 operation of the facilities herein complained of, and alleges a joint venture and common  
16 enterprise by all such defendants.

17 7. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited**  
18 **Liability Company, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to  
19 collectively as "defendants"), at all times relevant herein were and are owners, possessors,  
20 builders and keepers of the "**APPLE PEDDLER RESTAURANT**" in Crescent City, Del Norte  
21 County, California.

22 8. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited**  
23 **Liability Company, and DOES ONE to FIFTY, inclusive** are the owners and operators of  
24 the subject "**APPLE PEDDLER RESTAURANT**" at all times relevant to this Complaint.  
25 Plaintiff is informed and believes that each of the defendants herein is the agent, employee or  
26 representative of each of the other defendants, and performed all acts and omissions stated  
27 herein within the scope of such agency or employment or representative capacity and is  
28 responsible in some manner for the acts and omissions of the other defendants in legally

1 causing the damages complained of herein, and have approved or ratified each of the acts or  
2 omissions of each other defendant, as herein described.

3 9. Plaintiff **JEFF HOHLBEIN** does not know the true names and capacities of  
4 defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited Liability**  
5 **Company, and DOES ONE to FIFTY, inclusive**, their business capacities, their ownership  
6 connection to the property and business, nor their relative responsibilities in causing the  
7 access violations herein complained of, and alleges a joint venture and common enterprise by  
8 all such defendants. Plaintiff is informed and believes that each of the defendants herein,  
9 including DOES ONE to FIFTY, inclusive, is the agent, ostensible agent, master, servant,  
10 employer, employee, representative, franchiser, franchisee, joint venturer, partner, and  
11 associate, or such similar capacity, of each of the other defendants, and was at all times acting  
12 and performing, or failing to act or perform, with the authorization, consent, permission or  
13 ratification of each of the other defendants, and is responsible in some manner for the acts and  
14 omissions of the other defendants in legally causing the violations and damages complained of  
15 herein, and have approved or ratified each of the acts or omissions of each other defendant,  
16 as herein described. Plaintiff will seek leave to amend this Complaint when the true names,  
17 capacities, connections and responsibilities of defendants **APPLE PEDDLER**  
18 **RESTAURANTS, LLC, an Oregon Limited Liability Company, and DOES ONE to FIFTY,**  
19 **inclusive**, are ascertained.

20 10. Plaintiff is informed and believes that all named defendants, including DOES  
21 ONE to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively, aided  
22 and abetted one another in the performance of the wrongful acts hereinafter alleged.

23 11. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited**  
24 **Liability Company, and DOES ONE to FIFTY, inclusive**, are the owners and operators of  
25 the "**APPLE PEDDLER RESTAURANT**," located at Crescent City, Del Norte County,  
26 California. This restaurant, including, but not limited to, parking spaces and access aisles and  
27 access routes, are each a part of a "public accommodation or facility" subject to the  
28 requirements of **California Health & Safety Code § 19955, et seq.**, and of **California Civil**



1 **Code** §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "**APPLE PEDDLER**  
2 **RESTAURANT**" was constructed after 1990, which has subjected the "**APPLE PEDDLER**  
3 **RESTAURANT**" to handicapped access requirements per **California Health & Safety Code** §  
4 19959, and applicable portions of **California Code of Regulations**, Title 24, (the State  
5 Building Code).

6 12. On or about June 23, 2007, Plaintiff **JEFF HOHLBEIN**, visited the "**APPLE**  
7 **PEDDLER RESTAURANT**" in Crescent City, Del Norte County, California for the purpose of  
8 dining. Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited Liability**  
9 **Company, and DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the  
10 "**APPLE PEDDLER RESTAURANT**" as set forth in Paragraph 4 above.

11 Said acts and omissions denied Plaintiff legal handicapped access to the "**APPLE**  
12 **PEDDLER RESTAURANT**" according to federal and state law.

13 13. Plaintiff's residence is in Portland, Oregon, and he maintains mail reception in  
14 Eureka, California, where he regularly travels to for business and pleasure. The "**APPLE**  
15 **PEDDLER RESTAURANT**" in Crescent City, Del Norte County, California, is located on the  
16 route between Portland and Eureka and Plaintiff regularly stops in Crescent City. Plaintiff  
17 intends to return to "**APPLE PEDDLER RESTAURANT**" in Crescent City, Del Norte County,  
18 California when this public accommodation is made accessible.

19 14. Plaintiff encountered and/or is informed and believes that the following  
20 architectural barriers, which violate the requirements of the **California Code of Regulations**  
21 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those similarly  
22 situated full and equal access to the subject public facility as set forth in Paragraph 4 above.

23 15. Defendants, and each of them, discriminated against Plaintiff **JEFF HOHLBEIN**  
24 on the basis of his physical disability, and interfered with his access to the "**APPLE PEDDLER**  
25 **RESTAURANT**" establishment, in violation of both California law including, but not limited to,  
26 **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of  
27 Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision  
28 of the **Americans with Disabilities Act of 1990**.

16. As a result of the actions and failure to act of defendants, and each of them, and as a result of the failure to provide appropriate handicapped parking, proper handicapped signage, proper handicapped accessible entryways, and handicapped accommodations for a restaurant, Plaintiff **JEFF HOHLBEIN** suffered and will suffer a loss of his civil rights to full and equal access to public facilities, and further suffered and will suffer emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction of this court.

**I. FIRST CAUSE OF ACTION:**

**VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990***  
(42 **USC** §12101 *et seq.*)

17. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 16 of this Complaint and incorporates them herein as if separately repled.

18. Pursuant to law, in 1990 the United States Congress made findings per 42 **USC** § 12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

19. Congress stated as its purpose in passing the ***Americans with Disabilities Act of 1990*** (42 **USC** § 12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards

addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

20. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations identified for purposes of this title were "a restaurant, bar, or other establishment serving food or drink; . . ."

21. Pursuant to 42 **USC** § 12182,

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

22. Among the general prohibitions against discrimination were included in 42 **USC** §12182(b)(1)(A)(i):

**Denial of participation.** It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

23. Among the general prohibitions against discrimination were included in 42 **USC** §12182(b)(1)(E):

**Association** -- It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 *et seq.*

24. Among the general prohibitions against discrimination were included in 42 **USC**



1 § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

2 **Discrimination.** For purposes of subsection (a), discrimination includes -

3 (i) the imposition or application of eligibility criteria that screen out or tend  
4 to screen out an individual with a disability or any class of individuals with  
5 disabilities from fully and equally enjoying any goods, services, facilities,  
6 privileges, advantages, or accommodations, unless such criteria can be shown to  
7 be necessary for the provision of the goods, services, facilities, privileges,  
8 advantages, or accommodations being offered;

9 (ii) a failure to make reasonable modifications in policies, practices, or  
10 procedures, when such modifications are necessary to afford such goods,  
11 services, facilities, privileges, advantages, or accommodations to individuals with  
12 disabilities, unless the entity can demonstrate that making such modifications  
13 would fundamentally alter the nature of such goods, services, facilities,  
14 privileges, advantages, or accommodations.

15 25. Plaintiff alleges that constructing the eligibility requirements, policies, practices  
16 and procedure for entry to the "**APPLE PEDDLER RESTAURANT**" facility by persons with  
17 disabilities and their companions as established by the defendants can be simply modified to  
18 eliminate disparate and discriminatory treatment of persons with disabilities by properly  
19 constructing barrier free handicapped access for safe and full and equal enjoyment of the  
20 "**APPLE PEDDLER RESTAURANT**" as that enjoyed by other people.

21 26. The specific prohibition against retaliation and coercion is included in the  
22 **Americans With Disabilities Act of 1990** § 503(b) and the *Remedies and Procedures* in §  
23 503(c):

24 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce,  
25 intimidate, threaten, or interfere with any individual in the exercise or enjoyment  
26 of, or on account of his or her having exercised or enjoyed, or on account of his  
27 or her having aided or encouraged any other individual in the exercise or  
28 enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedure. - The remedies and procedures available  
under sections 107, 203, and 308 of this Act shall be available to aggrieved  
persons for violations of subsections (a) and (b), with respect to Title I, Title II  
and Title III, respectively.

27 27. Among the specific prohibitions against discrimination were included, in 42 **USC**  
28 § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers  
that are structural in nature, in existing facilities...where such removal is readily achievable;"



1 and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not  
2 readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or  
3 accommodations available through alternative methods if such methods are readily  
4 achievable." The acts of Defendants set forth herein were a violations of Plaintiff's rights under  
5 the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36,  
6 *et seq.*

7 28. The removal of the barriers complained of by Plaintiff as hereinabove alleged  
8 were at all times after 1990 "readily achievable." On information and belief, if the removal of all  
9 the barriers complained of here together were not "readily achievable," the removal of each  
10 individual barrier complained of herein was "readily achievable."

11 29. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily  
12 accomplishable and able to be carried out without much difficulty or expense." The statute and  
13 attendant regulations define relative "expense" in relation to the total financial resources of the  
14 entities involved, including any "parent" companies. Plaintiff alleges that properly repairing  
15 each of the items that Plaintiff complains of herein is readily achievable, including, but not  
16 limited to, correcting and repairing the items set forth in Paragraph 4 above.

17 The changes needed to remove barriers to access for the disabled were and are  
18 "readily achievable" by the defendants under standards set forth under 42 **USC** § 12181 of the  
19 **Americans with Disabilities Act of 1990**. (Further, if it was not "readily achievable" for  
20 defendants to remove all such barriers, defendants have failed to make the required services  
21 available through alternative methods, although such methods are achievable as required by  
22 42 **USC** §12181(b)(2)(a)(iv), (v).)

23 30. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §  
24 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil Rights**  
25 **Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to discrimination  
26 on the basis of disability in violation of this title and/or Plaintiff has reasonable grounds for  
27 believing that he is about to be subjected to discrimination in violation of **Americans With**  
28 **Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the public facilities

1 complained of herein for the purpose of entry and provision of goods and service so long as  
2 defendants continue to apply eligibility criteria, policies, practices and procedures to screen out  
3 and refuse to allow entry and service to persons with disabilities such as Plaintiff's.

4 31. Defendants', and each of their acts and omissions of failing to provide barrier free  
5 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation  
6 pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** § 12203):

7 It shall be unlawful to coerce, intimidate, threaten, or interfere with any  
8 individual in the exercise or enjoyment of, or on account of his or her having  
9 aided or encouraged any other individual in the exercise or enjoyment of, any  
right granted or protected by this Act.

10 32. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §  
11 12188), "Nothing in this section shall require a person with a disability to engage in a futile  
12 gesture if such person has actual notice that a person or organization covered by this title does  
13 not intend to comply with its provisions." Pursuant to this last section, Plaintiff, on information  
14 and belief, alleges that defendants have continued to violate the law and deny the rights of  
15 Plaintiff and other disabled persons to access this public accommodation for the purpose of  
16 buying and selling merchandise. Therefore, Plaintiff seeks injunctive relief pursuant to  
17 §308(a)(2),

18 "...Where appropriate, injunctive relief shall also include requiring the  
19 provision of an auxiliary aid or service, modifications of a policy, or provision of  
alternative methods, to the extent required by this title."

20 33. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil Rights**  
21 **Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to implement  
22 the **Americans with Disabilities Act of 1990**, including, but not limited to, an order granting  
23 injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and  
24 costs," are further specifically provided for by §505 of Title III.

25 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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27 ///

1 **II. SECOND CAUSE OF ACTION**

2 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL  
3 DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)

4 34. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
5 the allegations contained in paragraphs 1 through 33 of this Complaint and incorporate them  
6 herein as if separately repled.

7 35. *California Health & Safety Code* § 19955 provides in pertinent part:

8 The purpose of this part is to insure that public accommodations or  
9 facilities constructed in this state with private funds adhere to the provisions of  
10 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
11 *Government Code*. For the purposes of this part "public accommodation or  
12 facilities" means a building, structure, facility, complex, or improved area which is  
13 used by the general public and shall include auditoriums, hospitals, theaters,  
14 restaurants, hotels, motels, stadiums, and convention centers. When sanitary  
15 facilities are made available for the public, clients or employees in such  
16 accommodations or facilities, they shall be made available for the handicapped.

17 36. *California Health & Safety Code* § 19956, which appears in the same chapter  
18 as §19955, provides in pertinent part, "accommodations constructed in this state shall conform  
19 to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
20 *Government Code*..." *California Health & Safety Code* § 19956 was operative July 1, 1970,  
21 and is applicable to all public accommodations constructed or altered after that date. On  
22 information and belief, portions of "APPLE PEDDLER RESTAURANT" and/or of its buildings,  
23 were constructed and/or altered after July 1, 1970, and substantial portions of said building  
24 had alterations, structural repairs, and/or additions made to such public accommodations after  
25 July 1, 1970, thereby requiring said public accommodations and/or buildings to be subject to  
26 the requirements of Part 5.5, *California Health & Safety Code* § 19955, *et seq.*, upon such  
27 alteration, structural repairs or additions per *California Health & Safety Code* § 19959.

28 37. Pursuant to the authority delegated by *California Government Code* § 4450, *et*  
seq., the State Architect promulgated regulations for the enforcement of these provisions.  
Effective January 1, 1982, Title 24 of the *California Administrative Code* adopted the  
California State Architect's Regulations and these regulations must be complied with as to any  
alterations and/or modifications of the "APPLE PEDDLER RESTAURANT" occurring after that



1 date. Construction changes occurring prior to this date but after July 1, 1970, triggered access  
2 requirements pursuant to the "ASA" requirements, the **American Standards Association**  
3 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and  
4 modification of said building, all buildings and facilities covered were required to conform to  
5 each of the standards and specifications described in the **American Standards Association**  
6 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**,  
7 (now known as Title 24, **California Code of Regulations**.)

8 38. Public facilities, such as "APPLE PEDDLER RESTAURANT" are public  
9 accommodations or facilities within the meaning of **California Health & Safety Code** § 19955,  
10 *et seq.*

11 39. It is difficult or impossible for persons with physical disabilities who use  
12 wheelchairs, canes, walkers and service animals to travel about in public to use a store with  
13 the defects set forth in Paragraph 4 above as required by Title 24 of the **California Code of**  
14 **Regulations** and the **Americans with Disabilities Act Access Guidelines (ADAAG)**. Thus,  
15 when public accommodations fail to provide handicap accessible public facilities, persons with  
16 physical disabilities are unable to enter and use said facilities, and are denied full and equal  
17 access to and use of that facility that is enjoyed by other members of the general public.

18 40. Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with physical  
19 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and  
20 service animals are unable to use public facilities on a "full and equal" basis unless each such  
21 facility is in compliance with the provisions of the **California Health & Safety Code** § 19955,  
22 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the  
23 provisions of **California Health & Safety Code** § 19955, *et seq.*

24 41. The **California Health & Safety Code** was enacted "[t]o ensure that public  
25 accommodations or facilities constructed in this state with private funds adhere to the  
26 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*  
27 *Code*." Such public accommodations are defined to include restaurants.

28 42. Plaintiff is further informed and believes that as of the date of filing this



1 Complaint, Defendants have not made accessible the facilities at the subject restaurant as set  
2 forth in Paragraph 4 above.

3 43. Plaintiff **JEFF HOHLBEIN** is informed and believes, and therefore alleges, that  
4 Defendants **APPLE PEDDLER RESTAURANTS, LLC, an Oregon Limited Liability**  
5 **Company, and DOES ONE to FIFTY, inclusive**, and each of them, caused the subject  
6 buildings constituting "**APPLE PEDDLER RESTAURANT**" to be constructed, altered and  
7 maintained in such a manner that persons with physical disabilities were denied full and equal  
8 access to, within and throughout said buildings and were denied full and equal use of said  
9 public facilities, and despite knowledge and actual and constructive notice to such Defendants  
10 that the configuration of the restaurant and/or buildings was in violation of the civil rights of  
11 persons with physical disabilities, such as Plaintiff. Such construction, modification, ownership,  
12 operation, maintenance and practices of such public facilities are in violation of law as stated in  
13 Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of  
14 California.

15 44. On information and belief, the subject building constituting the public facilities of  
16 "**APPLE PEDDLER RESTAURANT**" denied full and equal access to Plaintiff and other  
17 persons with physical disabilities in other respects due to non-compliance with requirement of  
18 Title 24 of the **California Code of Regulations** and **California Health & Safety Code** §  
19 19955, *et seq.*

20 45. The basis of Plaintiff's aforementioned information and belief is the various  
21 means upon which Defendants must have acquired such knowledge, including, but not limited  
22 to, this lawsuit, other access lawsuits, communications with operators of other stores and other  
23 property owners regarding denial access, communications with Plaintiff and other persons with  
24 disabilities, communications with other patrons who regularly visit there, communications with  
25 owners of other businesses, notices and advisories they obtained from governmental agencies  
26 through the mails, at seminars, posted bulletins, television, radio, public service  
27 announcements, or upon modification, improvement, alteration or substantial repair of the  
28 subject premises and other properties owned by these Defendants, newspaper articles and

1 trade publications regarding the **Americans with Disabilities Act of 1990** and other access  
2 law, and other similar information. The scope and means of the knowledge of each defendant  
3 is within each defendant's exclusive control and cannot be ascertained except through  
4 discovery.

5 46. As a result of Defendants' acts and omissions in this regard, Plaintiff has been  
6 required to incur legal expenses and hire attorneys in order to enforce his civil rights and  
7 enforce provisions of the law protecting access for persons with physical disabilities and  
8 prohibiting discrimination against persons with physical disabilities, and to take such action  
9 both in his own interests and in order to enforce an important right affecting the public interest.  
10 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys' fees  
11 incurred, pursuant to the provisions of the **California Code of Civil Procedure** § 1021.5.  
12 Plaintiff additionally seeks attorneys' fees pursuant to **California Health & Safety Code** §  
13 19953 and **California Civil Code** §§ 54.3 and 55.

14 47. Defendants, and each of them, at times prior to and including June 23, 2007, and  
15 continuing to the present time, knew that persons with physical disabilities were denied their  
16 rights of equal access to all portions of this public facility. Despite such knowledge,  
17 Defendants failed and refused to take steps to comply with the applicable access statutes; and  
18 despite knowledge of the resulting problems and denial of civil rights thereby suffered by  
19 Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with disabilities, including the  
20 specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and  
21 refused to take action to grant full and equal access to persons with physical disabilities in the  
22 respects complained of hereinabove. Defendants and each of them have carried out a course  
23 of conduct of refusing to respond to, or correct complaints about, denial of handicap access.  
24 Such actions and continuing course of conduct by Defendants, evidence despicable conduct in  
25 conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,  
26 justifying an award of treble damages pursuant to **California Civil Code** § 54.3.

27 48. Defendants' actions have also been oppressive to persons with physical  
28 disabilities and of other members of the public, and have evidenced actual or implied malicious

1 intent toward those members of the public, such as Plaintiff and other persons with physical  
 2 disabilities who have been denied the proper access they are entitled to by law. Further,  
 3 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable  
 4 conduct in conscious disregard for the rights of Plaintiff and other members of the public with  
 5 physical disabilities.

6 49. Plaintiff prays for an award of treble damages against Defendants, and each of  
 7 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more  
 8 profound example of Defendants and discourage owners, operators, franchisers and  
 9 franchisees of other public facilities from willful disregard of the rights of persons with physical  
 10 disabilities.

11 50. As a result of the actions and failure of Defendants, and each of them, and as a  
 12 result of the failure to provide proper accessible public facilities, Plaintiff **JEFF HOHLBEIN** was  
 13 denied his civil rights, including his right to full and equal access to public facilities, was  
 14 embarrassed and humiliated, suffered physical, psychological and mental injuries and  
 15 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,  
 16 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and  
 17 naturally associated with a person with a physical disability being denied access to a public  
 18 accommodation.

19 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

20 **III. THIRD CAUSE OF ACTION**  
 21 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**  
 22 **(California Civil Code §§ 54, 54.1 and 54.3)**

23 51. Plaintiff repleads and incorporates by reference as if fully set forth again herein,  
 24 the allegations contained in paragraphs 1 through 50 of this Complaint and incorporates them  
 25 herein as if separately repled.

26 52. The public facilities above-described constitute public facilities and public  
 27 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.* and  
 28 were facilities to which members of the public are invited. The aforementioned acts and  
 omissions of defendants, and each of them, constitute a denial of equal access to and use and



1 enjoyment of these facilities by persons with disabilities, including Plaintiff **JEFF HOHLBEIN**.  
2 Said acts and omissions are also in violation of provisions of Title 24 of the **California Code of**  
3 **Regulations**.

4 53. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and the  
5 denial by defendants of such rights and entitlements are set forth in **California Civil Code** §§  
6 54, 54.1 and 54.3, to wit:

7 Individuals with disabilities shall have the same right as the...general  
8 public to full and free use of the streets, highways, sidewalks, walkways, public  
9 buildings, public facilities, and other public places. **California Civil Code** §  
54(a).

10 Individuals with disabilities shall be entitled to full and equal access, as  
11 other members of the general public, to accommodations, advantages, facilities,  
12 and privileges of all common carriers, airplanes, motor vehicles, railroad trains,  
13 motor buses, streetcars, boats, or any other public conveyances or modes of  
14 transportation (whether private, public, franchised, licensed, contracted, or  
15 otherwise provided), telephone facilities, adoption agencies, private schools,  
16 hotels, lodging places, places of public accommodation, amusement or resort,  
17 and other places to which the general public is invited, subject only to the  
18 conditions and limitations established by law, or state or federal regulation, and  
19 applicable alike to all persons. **California Civil Code** § 54.1(a).

20 54. On or about June 23, 2007, Plaintiff **JEFF HOHLBEIN** suffered violations of  
21 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the  
22 goods, services, facilities and privileges of said **APPLE PEDDLER RESTAURANT**, as set  
23 forth in paragraph 4 above.

24 Plaintiff was also denied full and equal access to other particulars, including, but not  
25 limited to, those described hereinabove. Plaintiff was also denied use of facilities that he was  
26 entitled to under Title III of the **Americans with Disabilities Act of 1990**.

27 55. As a result of the denial of full and equal enjoyment of the goods, services,  
28 facilities and privileges of defendants' **APPLE PEDDLER RESTAURANT** due to the acts and  
omissions of defendants, and each of them, in owning, operating and maintaining this subject  
public facility, Plaintiff suffered violations of his civil rights, including, but not limited to, rights  
under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury,  
emotional distress, mental distress, mental suffering, mental anguish, which includes shame,



1 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and  
2 naturally associated with a disabled person's denial of full and equal enjoyment of goods,  
3 services, privileges, etc. all to his damages as prayed hereinafter in an amount within the  
4 jurisdiction of the court. Defendants' actions and omissions to act constituted discrimination  
5 against Plaintiff on the sole basis that Plaintiff was physically disabled.

6 56. Plaintiff seeks damages for the violation of his rights as a disabled person on or  
7 about June 23, 2007, according to proof, pursuant to **California Civil Code** § 54.3, including a  
8 trebling of all statutory and actual damages, general and special, available pursuant to  
9 **California Civil Code** § 54.3(a).

10 57. As a result of defendants' acts and omissions in this regard, Plaintiff **JEFF**  
11 **HOHLBEIN** has been required to incur legal expenses and hire attorneys in order to enforce  
12 his rights and enforce provisions of the law protecting the full and equal enjoyment of goods,  
13 services, facilities, privileges of public facilities by the disabled, and those individuals  
14 associated with or accompanied by a person with disabilities, and prohibiting discrimination  
15 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable  
16 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 55. Additionally,  
17 Plaintiff's lawsuit is intended not only to obtain compensation for damages to Plaintiff, but also  
18 to compel the defendants to make their goods, services, facilities and privileges available and  
19 accessible to all members of the public with physical disabilities, justifying public interest  
20 attorneys' fees pursuant to the provisions of **California Code of Civil Procedure** § 1021.5.

21 58. The acts and omissions of defendants in failing to provide the required  
22 accessible facilities subsequent to the enactment date and compliance date of the **Americans**  
23 **with Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its  
24 handicapped parking, handicapped signage, pathways, and other elements as hereinabove  
25 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries,  
26 on or about June 23, 2007, and all times prior thereto with the knowledge that persons with  
27 disabilities would enter defendants' premises, the reason given therefor, was an established  
28 policy, practice and procedure of refusing and denying entry, thereby denying services to a

1 person with disabilities and the companions thereof, evidence malice and oppression toward  
2 Plaintiff and other disabled persons.

3 59. Plaintiff seeks injunctive relief pursuant to **California Civil Code** § 55 to require  
4 Defendants to comply with federal and state access regulations.

5 60. Defendants have failed to establish a nondiscriminatory criteria, policy, practice  
6 and procedure for entry into said "**APPLE PEDDLER RESTAURANT**" as hereinabove  
7 described.

8 61. As a result of defendants' continuing failure to provide for the full and equal  
9 enjoyment of goods, services, facilities and privileges of said "**APPLE PEDDLER**  
10 **RESTAURANT**" as hereinabove described, Plaintiff has continually been denied his rights to  
11 full and equal enjoyment of the subject restaurant, as it would be a "futile gesture" to attempt to  
12 patronize said "**APPLE PEDDLER RESTAURANT**" with the discriminatory policy in place as  
13 hereinabove described.

14 62. The acts and omissions of defendants as complained of herein in failing to  
15 provide the required accessible facilities subsequent to the enactment date and compliance  
16 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial  
17 modifications and alternations to the architectural barriers as stated herein and in failing to  
18 establish practices, policies and procedures to allow safe access by persons who are disabled  
19 are continuing on a day-to-day basis to have the effect of wrongfully and willfully excluding  
20 Plaintiff and other members of the public who are physically disabled, from full and equal  
21 enjoyment of the subject "**APPLE PEDDLER RESTAURANT**" as hereinabove described.  
22 Such acts and omissions are the continuing cause of humiliation and mental and emotional  
23 suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and second  
24 class citizen and serve to discriminate against him on the sole basis that he is physically  
25 disabled. Plaintiff is unable, so long as such acts and omissions of defendants continue, to  
26 achieve full and equal enjoyment of the goods and services of said "**APPLE PEDDLER**  
27 **RESTAURANT**" as described hereinabove. The acts of defendants have legally caused and  
28 will continue to cause irreparable injury to Plaintiff if not enjoined by this court.

63. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any continuing refusal by defendants to permit entry to said "**APPLE PEDDLER RESTAURANT**" and to serve Plaintiff or others similarly situated, and to require defendants to comply forthwith with the applicable statutory requirements relating to the full and equal enjoyment of goods and services as described hereinabove for disabled persons. Such injunctive relief is provided by **California Civil Code** § 55. Plaintiff further requests that the court award statutory costs and attorneys' fees to Plaintiff pursuant to **California Civil Code** § 55 and **California Code of Civil Procedure** § 1021.5, all as hereinafter prayed for.

WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees and costs of suit, as allowed by statute and according to proof.

**IV. FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF UNRUH CIVIL RIGHTS ACT**  
**(California Civil Code §§ 51 and 51.5)**

64. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 63 of this Complaint and incorporates them herein as if separately repled.

65. Defendants' acts and omissions as specified with regard to the discriminatory treatment of Plaintiff **JEFF HOHLBEIN** on the basis of his physical disabilities, have been in violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever."

66. **California Civil Code** § 51 also provides that "[a] violation of the right of any individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall also constitute a violation of this section."

67. **California Civil Code** § 51.5 also provides that

"[n]o business establishment of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers."

68. As a result of the violation of Plaintiff's civil rights protected by **California Civil Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean "special and general damages"), as well as reasonable attorneys' fees and costs, as allowed by statute, according to proof.

WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

#### PRAYER FOR RELIEF

Plaintiff prays that this court award damages and provide relief as follows:

1. Grant injunctive relief requiring that defendants establish a non-discriminatory criteria policy, practice and procedure permitting entry into the **APPLE PEDDLER RESTAURANT** in Crescent City, Del Norte County, California, for the purpose of obtaining the goods and services accorded therein according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and render safe to handicapped persons, and otherwise make handicapped-accessible, all public areas of the restaurant, including, but not limited to, each of the barriers to access identified in Paragraph 4, above, and make such facilities "readily accessible to and usable by individuals with disabilities," according to the standards of Title 24 of the **California Administrative Code**, **California Health & Safety Code** § 19955 *et seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting operation of the **APPLE PEDDLER RESTAURANT**, located in Crescent City, Del Norte County, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to physically disabled persons, including Plaintiff;

2. General damages according to proof;

3. Statutory and "actual" damages, including general damages and special damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that these damages be trebled;



1 4. Prejudgment interest on all compensatory damages;

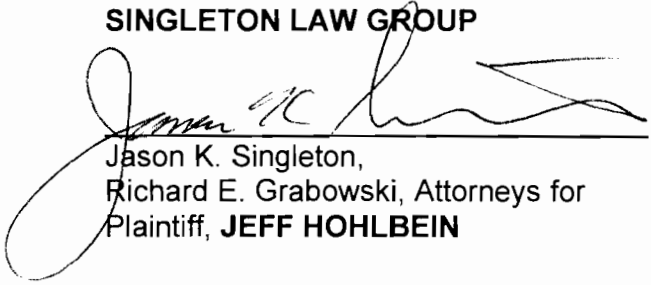
2 5. Remedies and Procedures available under **Americans with Disabilities Act of**  
3 **1990** §§ 107, 203 and 308;

4 6. Award Plaintiff all litigation expenses, all costs of this proceeding and all  
5 reasonable attorneys' fees as provided by law, including, but not limited to, those recoverable  
6 pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55, **California Code of**  
7 **Civil Procedure** § 1021.5, and **Americans with Disabilities Act of 1990** §308 of Title III; and

8 7. Grant such other and further relief as the court may deem just and proper.

9 **SINGLETON LAW GROUP**

10 Dated: September 24, 2007

11   
12 Jason K. Singleton,  
13 Richard E. Grabowski, Attorneys for  
14 Plaintiff, **JEFF HOHLBEIN**

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

17 **SINGLETON LAW GROUP**

18 Dated: September 24, 2007

19   
20 Jason K. Singleton,  
21 Richard E. Grabowski, Attorneys for  
22 Plaintiff, **JEFF HOHLBEIN**  
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